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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,442	09/08/2003	Dov L. Randall	0112300-1627	1420

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EXAMINER

HSU, RYAN

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 03/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,442

Applicant(s)

RANDALL ET AL.

Examiner

Ryan Hsu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/18/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Objections

Claim 44 is objected to because of the following informalities: Claim 44 is dependent upon claim 420, which does not currently exist, in the present application. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10, 18 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Baerlocher et al. (US 2002/0142822 A1).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1 and 18, Baerlocher discloses a gaming device comprising: a plurality of offers (*see “Offers” [100] of Fig. 4a and the related description thereof*) in a

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ladder game setting. These offers are correlated to steps, which determine which offer is given to the player. The steps are selected based on the revealed offer components (*"offer components" [108(a-x)] of Fig. 4a and the related description thereof*), wherein each of the offer components has an activated and a deactivated state (*see paragraph [0012], [0035], [0041]*); a plurality of awards, wherein each of the awards is associated with one of the offer components (*see relationship with 'steps' and 'offers' of Figs. 4(a-b) and the related description thereof*); a plurality of different component number modifiers (*see 'steps' of Fig. 4(a-b) and the related description thereof*); a display device (*see paragraph [0028]*); and a processor operable with the display device to: (a) select one or more offer components to activate from the plurality of offer components (*see element [118] of Fig. 5a and the related description thereof*); (b) determine an offer based on any of the awards associated with the activated offer components (*see paragraph [0036]-[0043]*); (c) enable a player to accept or reject the offer and provide the offer to the player if the accepts the offer (*see paragraph [0035]*); and (d) if the player rejects the offer, select at least one of the component modifiers, change the state of at least one of the plurality of offer components, wherein the number of offer components changing state is based on the selected component number modifier, determine a subsequent offer based on any of the awards associated with the current activated offer components and reveal the subsequent offer to the player (*see paragraph [0035]-[0043]*).

Regarding claims 10 and 29, Baerlocher discloses a gaming device comprising: a primary game operable upon a wager by a player (*see paragraph [0026]-[0027]*); a plurality of offer components (*see "offer components" [108(a-x)] of Fig. 4(a-b) and the*

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related description thereof), wherein each of the offer components has an activated and a deactivated state (*see paragraph [0012],[0035], [0041]*); a plurality of awards, wherein each of the awards is associated with one of the offer components (*see relationship with 'steps' and 'offers' of Figs. 4(a-b) and the related description thereof*); a plurality of component number modifiers and a triggering event associated with the primary game, wherein after the occurrence of the triggering event: (a) one or more offer components from the plurality of offer components are activated (*see element [118] of Fig. 5a and the related description thereof*); (b) an offer is determined based on any of the awards associated with the activated offer components (*see paragraph [0036]-[0043]*); (c) the player is enabled to accept or reject the offer and the offer is provided to the player if the player accepts the offer (*see paragraph [0035]*) and (d) if the player rejects the offer, at least one of the component number modifiers is selected, the state of at least one offer component is changed, wherein the number of changed offer components is based on the selected component number modifier, a subsequent offer is determined based on any of the awards associated with the current activated offer components and the subsequent award is revealed to the player (*see paragraph [0035]-[0043]*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-9, 11-17, 19-28, and 30-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baerlocher et al. as applied to claims above, and further in view of Claypole et al. (GB 2,353,128 A).

Regarding claims 37, 56, 58, 60, and 66, Baerlocher teaches a gaming device comprising: a plurality of offers (*see "Offers" [100] of Fig. 4a and the related description thereof*) in a ladder game setting. These offers are correlated to steps, which determine which offer is given to the player. The steps are selected based on the revealed offer components ("*offer components*" [108(a-x)] *of Fig. 4a and the related description thereof*), wherein each of the offer components has an activated and a deactivated state (*see paragraph [0012], [0035], [0041]*); a plurality of awards, wherein each of the awards is associated with one of the offer components (*see relationship with 'steps' and 'offers' of Figs. 4(a-b) and the related description thereof*); a plurality of different component number modifiers (*see 'steps' of Fig. 4(a-b) and the related description thereof*); a display device (*see paragraph [0028]*) and a processor operable with the display device to: (a) select one or more offer components to activate from the plurality of offer components; (b) determine an offer based on any of the awards associated with the activated offer components; (c) enable a player to accept or reject the offer and

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provide the offer to the player if the accepts the offer; and (d) provide the offer to the player if the player accepts the offer and alternatively (e) if the player rejects the offer to repeat the process again in which the player will received another offer until the amount of offers have been used up or a termination limit has been reached. Baerlocher's gaming device teaches that the process that comprises of: (i) select at least one of the component number modifiers (*see element [118] of Fig. 4(a-b) and the related description thereof*); (ii) select at least one offer component from the plurality of offer components if the selected component number modifier is associated with a positive number wherein the number of offer components selected is based on the associated positive number (*see 'offer components' [108(a-x)] and 'steps' [110] of Fig. 5(a-d) and the related description thereof*); (iii) deselect at least one of the selected offer components if the selected component number modifier is associated with a negative number wherein the number of deselected offer components is based on the associated negative number (*see paragraph [0035]-[0046]*); (iv) determine a subsequent offer based on any of the awards associated with the current selected offer components (*see relationship with 'steps' [110], 'offer components' [108(a-x)] and offers [100] of Fig. 5d and the related description thereof*) and (v) reveal the subsequent offer to the player (*see paragraph [0037-0045]*).

Baerlocher's gaming device simply only mentions that the step calculation or component number modifiers may also include negative numbers and is up to the discretion of the game owner. However the implantation of using negative numbers as a component number modifier is not shown.

Regarding claims 48, 57, 62, and 67, Baerlocher a gaming device comprising: a primary game operable upon a wager by a player (*see paragraph [0026]-[0027]*); a plurality of offer components (*see "offer components" [108(a-x)] of Fig. 4(a-b) and the related description thereof*), wherein each of the offer components has an activated and a deactivated state (*see paragraph [0012], [0035], [0041]*); a plurality of awards, wherein each of the awards is associated with one of the offer components (*see relationship with 'steps' and 'offers' of Figs. 4(a-b) and the related description thereof*); a plurality of component number modifiers and a triggering event associated with the primary game, wherein after the occurrence of the triggering event: (a) one or more offer components from the plurality of offer components are activated; (b) an offer is determined based on any of the awards associated with the activated offer components; (c) the player is enabled to accept or reject the offer and the offer is provided to the player if the player accepts the offer and alternatively (e) if the player rejects the offer to repeat the process again in which the player will received another offer until the amount of offers have been used up or a termination limit has been reached. Baerlocher's gaming device teaches that the process that comprises of: (i) select at least one of the component number modifiers (*see element [118] of Fig. 4(a-b) and the related description thereof*); (ii) select at least one offer component from the plurality of offer components if the selected component number modifier is associated with a positive number wherein the number of offer components selected is based on the associated positive number (*see 'offer components' [108(a-x)] and 'steps' [110] of Fig. 5(a-d) and the related description thereof*); (iii) deselect at least one of the selected offer components if the selected component number modifier is associated with a negative number wherein the number of deselected offer

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components is based on the associated negative number (*see paragraph [0035]-[0046]*); (iv) determine a subsequent offer based on any of the awards associated with the current selected offer components (*see relationship with 'steps' [110], 'offer components' [108(a-x)] and offers [100] of Fig. 5d and the related description thereof*) and (v) reveal the subsequent offer to the player (*see paragraph [0037-0045]*). Baerlocher's gaming device simply only mentions that the step calculation or component number modifiers may also include negative numbers and is up to the discretion of the game owner. However the implantation of using negative numbers as a component number modifier is not shown.

In an analogous offer acceptance game, Claypole teaches the implementation of three trails (*see 348', 350', and 352' of Fig. 3 and the related description thereof*) that contains light indicators that correspond to a prize award value. Claypole teaches that the goal of the player is to collectively analyze and wager the risk of moving the indicator towards the jackpot (*see 'jackpot' of [348', 350', and 352'] of Fig. 3 and the related description thereof*). The indicators on the trails are moved based on the random generated result of the track (*see [356] of Fig. 3*). The track selection will offer movement of various values forward and backwards along the various colored trails. The track effectively acts as a component number modifier by effecting the outcome of the offer the player receives wherein the player must gamble for higher or lower gain or collect (*see 'start gamble' [326] and 'collect' [330] of Fig. 3 and the related description thereof*). Claypole effectively shows a component number modifier that includes a negative step or number to be used to modify the offer. One would be motivated to implement the features of Claypole when trying to realize the disclosure of using

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negative numbers as taught in Baerlocher. Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate the feature of negative numbers effectively to add a layer of player excitement to the game taught by Baerlocher.

Regarding claims 2, 11, 19, 30, 38, 49, 61, and 65, Baerlocher teaches a gaming device wherein the processor enables the player to accept or reject the subsequent offer (*see "Accept" [106] and "Reject" [108] of Fig. 3 and the related description thereof*).

Regarding claims 3, 12, 20, 31, 39, and 50, Baerlocher teaches a gaming device wherein the plurality of offer components are initially masked (*see paragraph [0008]*).

Regarding claims 4, 21, 40, and 51, Baerlocher teaches a gaming device wherein the processor is operable to enable the player to activate one or more of the plurality of offer components (*see paragraph [0009]*).

Regarding claims 5, 13, 22, 32, 41, and 52, Baerlocher teaches a gaming device wherein the plurality of component number modifiers are initially masked (*see paragraph [0009] and [0050]*).

Regarding claims 6, 14, Baerlocher teaches a gaming device wherein each of the plurality of offer components is associated with a probability of being activated (*see paragraph [0036], [0040-0043]*).

Regarding claims 7, 15, Baerlocher teaches a gaming device wherein the probabilities are different based on the awards associated with the offer component (*see [0040-0043]*).

Regarding claims 8, 16, Baerlocher teaches a gaming device wherein the greater the award associated with one of the offer components, the lower the probability of the offer component being activated (*see [0040-0043]*).

Regarding claims 9, 17, 26, 36, 45, Baerlocher teaches a gaming device wherein the award associated with each offer component is selected from a range of awards (*see paragraph [0038-0040]*).

Regarding claims 23-25, 33-35, 42-44, 53-55, Baerlocher teaches a gaming device wherein each of the plurality of components is associated with a probability of being selected and the probabilities are different based on the award associated with the offer component (*see paragraph [0038-0042]*). Additionally, the greater the award associated with one of the offer components the lower the probability of the offer component being selected (*see paragraph [0043]*).

Regarding claims 27, Baerlocher teaches a gaming device which includes a component number modifier selector operable with the processor to select at least one of

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the component number modifiers if the player rejects the offer (*see selection process [118] of Figs. 4(a-b) and the related description thereof, paragraph [0041], [0046]*)

Regarding claims 28, Baerlocher teaches a gaming device wherein the component number modifier selector is selected from the group consisting of lights, buttons, wheels, reels, dice and cards (*see paragraph [0038]*).

Regarding claims 46, Baerlocher teaches a gaming device wherein the number associated with each component number modifier is selected from a range of numbers (*see paragraph [0039]*).

Regarding claim 47, Baerlocher teaches a gaming device wherein each of the plurality of component number modifiers is associated with a probability of being selected (*see paragraph [0040]*).

Regarding claim 58, Baerlocher teaches a gaming device wherein at least one of the component number modifiers is associated with a negative number (*see paragraph [0041]*).

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be direct to Ryan Hsu whose telephone number is (571)-272-7148. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

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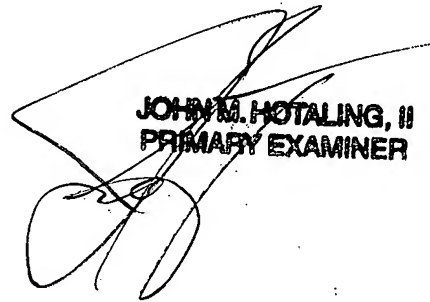
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Jones can be reached at (571)-272-4438.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll-free).



RH

March 19, 2006



JOHN M. HOTALING, II
PRIMARY EXAMINER